BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

BILLIE J. DESHAZER	)	
Claimant	)	
VS.	)	
	)	Docket No. 241,169
CLASSIC FLOORS, INC.	)	
Respondent	)	
AND	)	
	)	
STATE FARM FIRE & CASUALTY COMPANY	)	
Insurance Carrier	)	

ORDER

Claimant appeals from an Award entered by Administrative Law Judge Julie A. N. Sample on August 25, 2000. The Appeals Board heard oral argument on February 15, 2001.

APPEARANCES

Chris Miller of Lawrence, Kansas, appeared on behalf of claimant. Rex W. Henoch of Lenexa, Kansas, appeared on behalf of respondent and its insurance carrier.

RECORD AND STIPULATIONS

The Appeals Board has considered the record and adopted the stipulations listed in the Award.

ISSUES

The Administrative Law Judge denied benefits based on her finding that claimant failed to serve a timely written claim for compensation on the employer.[1] Claimant seeks Appeals Board review of that finding contending that either the accident report of July 21, 1997 or the medical release sent to the insurance carrier constitutes written claim and further argues that respondent and its insurance carrier should be estopped from asserting a written claim defense based upon representations made to claimant. Whether claimant made a timely written claim for compensation is the only issue for review.

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[1] K.S.A. 44-520a.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments, the Appeals Board concludes that the Award by the Administrative Law Judge should be reversed and benefits awarded.

As stated, whether claimant made timely written claim, is the sole issue for review by the Board. The parties have stipulated that the claim is otherwise compensable and if a written claim was timely, claimant is entitled to a permanent partial disability award based upon a 3.5 percent loss of use to the leg.[2]

Claimant was injured at work on July 9, 1997. She gave timely notice of the injury[3] to respondent and was provided authorized medical treatment with Dr. William Bailey.

Claimant testified she hand delivered each note or medical record from Dr. Bailey to William Eddings, respondent's President. After she gave him the first one, he had her help fill out an accident report form. The form, Exhibit 5, was a form K-WC 1101-A Employers Report of Accident provided by the Kansas Division of Workers Compensation.[4] Claimant thought this accident report form was prepared for the purpose of receiving workers compensation benefits and that by submitting it and the medical information as instructed she had completed the requirements necessary to seek workers compensation benefits.

In fact, claimant did continue to receive medical treatment from respondent and its workers compensation insurance carrier. The medical bills for her treatment were sent to the respondent's workers compensation insurance carrier and paid. Claimant was taken off work by Dr. Bailey and was off work approximately four weeks due to her injury and was paid temporary total disability compensation. During this time she spoke on the telephone

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[2] See K.S.A. 1997 Supp. 44-510d(a)(16).

[3] K.S.A. 44-520.

[4] Webre Depo. Exh. 5, the Employers Report of Accident form, is stamped "Received" by the insurance carrier's workers compensation claims office on July 21, 1997. There is no indication, however, as to when it was filed with the Kansas Division of Workers Compensation.

with the insurance adjuster, Patricia Webre, and received letters from Ms. Webre about her "claim".[5]

No mention was made of a written claim for compensation being required or that claimant needed to do anything other than sign and return the requested authorization, which she did on July 28, 1997,[6] in order to continue receiving workers compensation benefits.

This letter was apparently sent with little or no question but that the claim was compensable and would be paid. While there is no allegation that respondent sent this letter with any intent to deceive or mislead claimant (see K.S.A. 44-5,120), such a letter could result in a claimant believing she had done all that was required to make a claim for compensation.

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[5] On July 24, 1997, claimant was sent a letter, Webre Deposition Exhibit 1, on State Farm Insurance Companies' letterhead. This letter, signed by "Patricia L. Webre, Senior Claim Representative, Workers' Compensation Claims", references "Claim Number: 16-W004-962, Insured: Classic Floors & Design Center, Inc., Date of Accident: 07/09/97" and reads as follows:

> As the Workers' Compensation carrier for your employer, I am writing regarding a recent accident which involved injury to you.
>
> We are in the position to honor all medical expenses incurred as a result of this accident and all compensation which you are entitled to under the laws of this state for lost time from work. **If you do have loss of wages that are compensable under the laws of this state, we will need a doctor's verification of temporary disability before we can make payment.** If you have any bills to present, please forward directly to my attention or through your employer. Your medical expenses will be paid directly to the doctor or other medical providers. Please be advised that treatment is authorized only through the office of Dr. William Bailey. Treatment by any other physician is unauthorized and will be at your own expense.
>
> Please fully complete and sign the enclosed Authorization form and return it as soon as possible. This form is required in order for us to obtain the necessary medical information to process this claim.
>
> Enclosed is a Claim Advisory Information pamphlet. This information pamphlet is provided by the Kansas Division of Workers' Compensation. It may be able to answer questions you have regarding your Workers' Compensation Claim.
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> If you have any questions regarding your claim or the Workers' Compensation Laws, please feel free to correspond with me, referring to the above claim.

[6] Webre Depo Exh. 3 is the signed "Medical Authorization". This form is stamped "Received" on July 31, 1997 by the insurance carrier's workers compensation claims office.

Eventually, on October 16, 1997 the insurance adjuster wrote claimant that since she was no longer receiving medical treatment they were closing their file.[7] Claimant did not seek any further authorized treatment and did not submit anything else which might be considered a written claim until her Application for Hearing on January 11, 1999, more than 200 days and also more than one year after the last compensation (medical treatment) was provided.

Therefore, if neither the doctor's notes and the accident report claimant provided to the employer, nor the medical authorization provided to the respondent's insurance carrier were a written claim for compensation, then claimant has failed to comply with K.S.A. 44-520a.

The Kansas Supreme Court has stated that the purpose for written claim is to enable the employer to know about the injury in time to investigate it. Craig v. Electrolux Corporation, 212 Kan. 75, 82, 510 P.2d 138 (1973). The same purpose or function has been ascribed to the requirement for notice found in K.S.A. 44-520. Pike v. Gas Service Co., 223 Kan. 408, 573 P.2d 1055 (1978). Written claim is, however, one step beyond notice in that an intent to ask the employer to pay compensation is required. In Fitzwater v. Boeing Airplane Co., 181 Kan. 158, 166, 309 P.2d 681 (1957), the Kansas Supreme Court described the test as follows:

> In determining whether or not a written instrument is in fact a claim the court will examine the writing itself and all the surrounding facts and circumstances, and after considering all these things, place a reasonable interpretation upon them to determine what the parties had in mind. The question is, did the employee have in mind compensation for his injury when the instrument was signed by him or on his behalf, and did he intend by it to ask his employer to pay compensation?

The accident report form claimant completed with her employer contained a description of the accident and injury. But because notice had been given previously, the purpose of allowing respondent the opportunity to investigate her accident had already been accomplished. Rather, by this report of accident form the claimant's intent was to continue receiving authorized medical treatment (compensation). When claimant delivered to Mr. Eddings the paperwork given to her by the doctor and helped complete the accident report form, she believed she was doing all that was necessary for workers compensation. That she would think so is not surprising in light of the fact she received the workers compensation benefits of medical treatment and temporary total disability compensation.

Respondent argues that because the document claimant completed for respondent was an Employers Report of Accident form, the Board cannot consider it for the purpose of written claim. K.S.A. 44-557 sets forth the circumstances under which an employer is

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[7] Webre Depo. Exh. 2.

required to file a report of accident. To encourage compliance with this requirement, a report form is provided by the Division of Workers Compensation and, under certain circumstances, the Act affords an employer certain protections for statements it makes in that report.[8] For this reason, the Employers Report of Accident form is not intended to be and should not be used as a substitute for a claim form. It is also not intended to be used in place of an internal incident report. Requesting an employee to help fill out an Employers Report of Accident form as a method of requesting workers compensation benefits is a misuse of the Division's report form. Therefore, the writings made on that form should not be protected or barred from evidence by K.S.A. 44-557(b).[9] But looking beyond the four corners of that exhibit, claimant testified to helping make a writing at the request of the owner as part of making a claim for workers compensation benefits. This was done within 200 days of her accident. Claimant's testimony in this regard is acknowledged by Mr. Eddings. This testimony, standing alone, satisfies claimant's burden even without introducing the actual document. Likewise, claimant testified to making another writing, signing the medical authorization, at the request of the insurance carrier. This was also done within 200 days of the accident. Claimant's testimony in this regard is supported by Ms. Webre. This also was done by claimant with the intent to claim workers compensation benefits.

Respondent and its insurance carrier argue that this writing, the medical authorization, cannot satisfy the requirements of K.S.A. 44-520a because written claim must be made to the respondent and not the insurance carrier, citing Lott-Edwards v. Americold Corporation, 27 Kan. App. 2d 689, 6 P.3d 947 (2000), where the Kansas Court of Appeals said: "It is the employer, Americold, that is entitled to notice and receipt of a written claim, not its insurance company."[10]

The Lott-Edwards case does address an issue concerning written claim but, that was not the issue the Court was addressing in the paragraph the above quote is taken from. The quoted sentence was taken from a paragraph discussing an insurance carrier's argument concerning an alleged denial of due process and an opportunity to be heard, not written claim. As a result, the Board believes the above quoted language to be dicta.[11]

On the issue of written claim the Court of Appeals in Lott-Edwards cites with approval the Kansas Supreme Court's opinion in Pyeatt v. Roadway Express, Inc., 243 Kan. 200, 756 P.2d 438 (1988), and says:

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[8] K.S.A. 44-557(b).

[9] *See* Beckner v. State of Kansas, WCAB Docket No. 234,591 (August 1999).

[10] Lott-Edwards at 696-697.

[11] *See* Kissick v. Salina Manufacturing Co., Inc., 204 Kan. 849, 466 P.2d 344 (1970).

> Turning to the written claim issue, we note its purpose is to enable the *employer* to know about the injury in order to make a timely investigation. *Pyeatt v. Roadway Express, Inc.,* 243 Kan. 200, 204, 756 P.2d 438 (1988). In *Pyeatt*, the court found the employer had sufficient notice that the subsequent injury aggravated the prior injury and the compensation sought was for the cumulative effect of two work-related accidents. The court noted that Pyeatt's ultimate claim differed from his initial claim, but the employer was not prejudiced because the cause and type of the injury was known to the employer. The court held that even though Pyeatt did not amend his original claim, the employer had sufficient notice and knowledge of the accidents and sufficient knowledge that the claim for compensation was based on both accidents. (Emphasis supplied.)

In addition, the Board considers the Supreme Court's opinion in Ours v. Lackey, 213 Kan. 72, 515 P.2d 1071 (1973), to be on point.

> The written claim required by K.S.A. 1972 Supp. 44-520a to be served upon the employer under the Workmen's Compensation Act need not be signed by or for the claimant. The written claim may be presented in any manner and through any person or agency. The claim may be served upon the employer's duly authorized agent.[12]

The Board believes the purposes of the Kansas Workers Compensation Act and of the written claim statute in particular, are best served here by finding the respondent's workers compensation insurance carrier, and specifically the adjuster assigned to Ms. DeShazer's claim, to be the agent of the employer for purposes of receiving written claim.[13] This acknowledges the reality of how most employers deal with workers compensation claims. Except for self-insured respondents and the larger employers with experienced and trained human resources personnel, most employers simply turn the handling of their workers injuries over to their insurance carrier. The parties acknowledge that the purpose of the written claim statute, affording the employer an opportunity to promptly investigate the injury, was satisfied in this case. Likewise, the purpose promoting finality and of preventing stale claims was also accomplished by the timely filing of the Form E-1 Application for Hearing.[14]

The Board concludes that both the document claimant helped her employer fill out and the document she signed for respondent's insurance carrier, should be treated as a

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[12] Syl. ¶ 4.

[13] *See* Santiago v. City of Arkansas City, WCAB Docket No. 250,203 (August 2000).

[14] *See* K.S.A. 1997 Supp. 44-534.

written claim and written claim was, therefore, timely. Furthermore, respondent and its insurance carrier should otherwise be estopped from asserting no timely written claim as a defense to this claim based upon the insurance carrier's written acknowledgment of the existence of a "claim" in its correspondence to claimant.[15]

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award entered by Administrative Law Judge Julie A. N. Sample dated August 25, 2000, should be, and is hereby, reversed and benefits awarded.

WHEREFORE, AN AWARD OF COMPENSATION IS HEREBY MADE IN ACCORDANCE WITH THE ABOVE FINDINGS IN FAVOR of the claimant, Billie J. DeShazer, and against the respondent, Classic Floors, Inc., and its insurance carrier, State Farm Fire & Casualty Company, for an accidental injury which occurred July 9, 1997 and based upon an average weekly wage of $240.00 for 4 weeks of temporary total disability compensation at the rate of $160.01 per week or $640.04, followed by 14.53 weeks of permanent partial disability compensation at the rate of $160.01 per week or $2,324.95, for a 3.5% loss of use of the leg, making a total award of $2,964.99, which is ordered paid in one lump sum less amounts previously paid.

Respondent is ordered to pay all reasonable and related medical expenses.

Future medical is awarded upon proper application to and approval by the Director.

An unauthorized medical allowance of up to $500 is awarded upon presentation to respondent of an itemized statement verifying same.

Claimant's attorney fee contract is hereby approved insofar as it is not inconsistent with K.S.A. 44-536.

The fees necessary to defray the expense of the administration of the Workers Compensation Act are hereby assessed against the respondent and its insurance carrier to be paid as follows:

Hostetler & Associates, Inc.	
Transcript of Regular Hearing	$161.70
Gene Dolginoff Associates, Ltd.	
Deposition of Patricia Webre	$195.70

[15] *See*, Marley v. M. Bruenger & Co., Inc., 27 Kan. App. 2d 501, Syl. ¶ 3, 6 P.3d 421, *rev. denied* ___ Kan. ___; Scott v. Wolf Creek Nuclear Operating Corp., 23 Kan. App. 2d 156, 928 P.2d 109 (1996).

Deposition of William Eddings	$195.70
Nora Lyon & Associates	
Deposition of Robert W. Warner, D.C.	$ 73.00

IT IS SO ORDERED.

Dated this ____ day of March 2001.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Chris Miller, Lawrence, KS
Rex W. Henoch, Lenexa, KS
Julie A. N. Sample, Administrative Law Judge
Philip S. Harness, Director